

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05 CR 92

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK COX,

Defendant.

ORDER

THIS MATTER IS BEFORE THE COURT upon the Third Party Petition Opposing Forfeiture (file doc. 10) and the Government's Motion to Dismiss, and (in the alternative) Motion for Summary Judgment (file doc. 11). The Government responded to the Third Party Petition Opposing Forfeiture on May 26, 2005, and at the same time filed its Motion to Dismiss and, in the alternative, Motion for Summary Judgment. The Third Party Petitioner replied to the Government's Motions on August 12, 2005, and filed an amended reply on August 16, 2005. Accordingly, the Petitions and the Motions are ripe for disposition by this Court.

As required by statute, this Court will conduct a hearing to adjudicate the validity of the third party's interest in the property. *See* 21 U.S.C. § 853(n)(2). The Court notes that Ms. Cox's Third Party Petition Opposing Forfeiture was filed within the time limit required under 21 U.S.C. § 853(n)(2), however, she did not formally request a hearing in her initial petition. The Court finds this fact to be of little impact because the Government was clearly on notice from Ms. Cox's Memorandum that she alleges to have a superior interest in the relevant property. This is evident from the Government's comment that "§853(n)(4) contemplates a hearing as part of the ancillary proceeding." (Gov't's Resp. at ¶ 7.) Accordingly, this Court will hold a hearing on the

Third Party Petition Opposing Forfeiture, necessarily also taking up the issues raised in the Government's Motion to Dismiss and (in the alternative) Motion for Summary Judgment.

IT IS THEREFORE ORDERED that a hearing take place on September 21, 2005 at 10:30 a.m. in Courtroom 3 of the Charles R. Jonas Federal Building.

Signed: September 2, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

